TRIGEN

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January 13, 2000

The Honorable Tom Bliley
United States House of Representatives
Washington, D.C. 20515-4607

Dear Chairman Bliley:

I am writing to you on behalf of Trigen Energy Corporation, which owns and operates combined heat and power ("CHP") facilities throughout the U.S. Last month, you forwarded to selected representatives of the electricity industry a request for comments on H.R. 2944, the "Electricity Competition and Reliability Act." In that letter, you requested a "thorough and rigorous analysis" of the bill. As you consider the responses of these parties, I ask that you focus on certain issues of significant importance to our company. We believe that addressing these issues in an electric restructuring bill would encourage and enable the development of combined heat and power facilities, providing significant benefits for both the economy and the environment.

A combined heat and power system uses a single fuel source to produce either electrical or mechanical power and thermal energy. A CHP facility can put up to 95 percent of the useful energy in fuel to beneficial use, in contrast to the 33 percent conversion efficiency of typical conventional steam-electric generating plants. Accordingly, by combining heat and power production, CHP facilities make use of energy that would be wasted in conventional generating facilities. Fuel costs are cut, and so are emissions.

H.R. 2944 contains several important provisions that would help to promote CHP development. The bill contains interconnection language that would eliminate the ability of owners of transmission and distribution to discriminate against independently owned CHP facilities. The process of interconnecting a new generation source to the transmission and distribution grids remains subject to ad hoc procedures and standards that give rise to uncertainty and, in some cases, competition-inhibiting behavior. At present, every utility has a different interconnection requirement based on the size of the generator, the capacity of the feeder that the generator is interconnecting with, and their own view of what kind of switching and relay protection is required for the project. Each interconnection is basically custom-designed, with drawings and an equipment list passed back and forth between the generator and the utility until they come to an agreement. Manufacturers have no ability to plan for interconnection generally nor do they have the ability to get capital costs down through, production volume because each interconnect is generally different from the next.

Notwithstanding some claims to the contrary, imposition of mandatory interconnection standards would not affect the reliability of the grid, regardless of the size of the interconnecting facility. To the extent an interconnected generating facility seeks to sell power on the distribution grid, for example, it would have access only to the extent distribution capacity is available. To the extent capacity is not available, it would not be able to make such sales, notwithstanding its interconnected status. In fact, mandatory interconnection standards would benefit grid reliability by ensuring that all interconnections comply with safety and reliability concerns relating to interconnection. We are seeking consistency and predictability, not a reduction in the system's current reliability.

The subcommittee language providing for mandatory interconnection standards went through several iterations prior to the mark-up of the bill. The language finally approved by the subcommittee bill contains important improvements, including language that focuses on function rather than size. Under the language, all distributed generation facilities can rely on the mandatory interconnection standards, regardless of the size of the facility. Nevertheless, we believe that the interconnection language needs some additional modifications. First, the requirement that distributed generation facilities must serve retail customers at the facility site would eliminate the application of mandatory standards for plants that might also sell some of all of the electricity to an off-site retail consumer, and should therefore be stricken, or at least modified. In addition, both the transmission and the distribution provisions should require that the costs paid by the facility be just, reasonable, not unduly discriminatory and comparable. Finally, both the distribution and the transmission provisions should contain back-up power provisions.

In addition to the interconnection provisions, there are several other provisions which we believe require modifications. First, the bill proposes to repeal both the "must buy" and the "must sell" provisions of section 210 of PURPA. The "must sell" provision should not be repealed until all retail markets are competitive and until back-up power can be purchased competitively. That is not the case now, and until those fundamental changes are made, the utility should continue to be required to provide back-up power for qualifying facilities. Elimination of PURPA's "must sell" requirement before laws are changed to allow new facilities to purchase back-up power competitively will leave new entrants at the mercy of the local utility, subject to discriminatory pricing or outright denial of back-up power.

The bill also contains a savings clause that would allow states to preempt federal law in a number of areas, including interconnection standards. Such a provision would defeat the intent of the interconnection language, which is to establish uniform national standards for interconnection. Just as the Nation has standardized the outlets and plugs for various types of appliances, and doesn't allow gaming of the system to favor one appliance manufacturer over another, so should the Nation assure establishment of appropriate national standards for interconnection of electrical generators.

The bill is also missing a number of important provisions. First, the bill fails to include any language requiring States to consider reducing or eliminating the stranded costs charge on an electric consumer which efficiently produces energy on-site through a combined heat and power facility. Such a provision would be consistent with an overall agenda of promoting clean and efficient power generation without imposing a mandate on States.

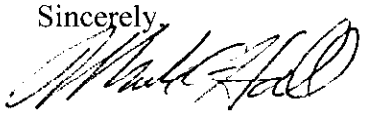
In addition, the bill fails to include a short-term tax credit to assist in the deployment of combined heat and power facilities. Tax credits are typically offered by the Federal government to obtain public benefits by prompting private parties to make economic choices that they would not so readily make otherwise. As such, an investment tax credit is a good short-term mechanism to promote CHP systems, which offer very significant public and private economic and environmental benefits, but can often be more difficult for the private sector to deploy than electric-only projects because of the complexity inherent in assembling a "thermal load" or set of heating/cooling customers.

Finally, the bill does not include a provision to modify the Internal Revenue Code to add new schedules of class lives for key energy generation technologies. The tax code currently does not allow depreciation of CHP and distributed generation technologies in a way that matches how the technology is actually used. This inappropriate treatment discourages investments in these technologies. For example, the IRS allows a gas turbine located inside a building for on-site generation use to be depreciated over a 39-year period. The same piece of equipment used for transportation (e.g., on an airplane) depreciates in one quarter of the time. The moving parts of the turbine used for electricity and heating may be replaced as many as three times while the owner continues to depreciate the original investment. Shortening the time over which this equipment depreciates would remove an impediment to investment in what is otherwise an efficient and environmentally beneficial technology.

A truly competitive retail electricity market requires not just access to distribution facilities, but open, comparable, and uniform interconnection to those same facilities. An incumbent provider's ability to stifle competition through imposition of unreasonable and unnecessary interconnection requirements and the inability of suppliers to manufacture CHP units in volume is inconsistent with the goal of promoting truly competitive and economically efficient retail markets. Moreover, a restructuring bill should contain those other provisions described above which would encourage and enable the development of these efficient generating facilities. Thank you for this opportunity to discuss a few of the many important issues your committee will be addressing as you consider H.R. 2944.

If I may be of any additional assistance, please feel free to call me at (914) 286-6621.

Sincerely,



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